

SUMMARY ANALYSIS OF AMENDED BILL

Franchise Tax Board

Author: Ortiz Analyst: Kimberly Pantoja Bill Number: SB 549

Related Bills: See Prior Analysis Telephone: 845-4786 Amended Date: 04/12/99

Attorney: Patrick Kusiak Sponsor:

SUBJECT: Employer Child Care Credit/70% Of Costs for Facilities Serving Low-Income Children/Bank Loans Credit

DEPARTMENT AMENDMENTS ACCEPTED. Amendments reflect suggestions of previous analysis of bill as introduced/amended _____.

X AMENDMENTS IMPACT REVENUE. A new revenue estimate is provided.

AMENDMENTS DID NOT RESOLVE THE DEPARTMENT'S CONCERNS stated in the previous analysis of bill as introduced February 19, 1999.

X FURTHER AMENDMENTS NECESSARY.

DEPARTMENT POSITION CHANGED TO _____.

X REMAINDER OF PREVIOUS ANALYSIS OF BILL AS INTRODUCED February 19, 1999 STILL APPLIES.

OTHER - See comments below.

SUMMARY OF BILL

Under the Personal Income Tax Law (PITL) and the Bank and Corporation Tax Law (B&CTL), this bill would expand the Employer Child Care Program Credit to allow taxpayers who pay costs for a child care program or facility that serves at least 40% low-income children to claim the credit. This bill also would increase the credit percentage from 30% to 70% for a facility registering at least 51% of low-income children. This bill also would increase the maximum carryover amount for the Employer Child Care Program Credit to \$150,000 and allow the credit to reduce regular tax below tentative minimum tax (TMT) for purposes of alternative minimum tax calculation.

Under the B&CTL, this bill also would allow a credit equal to 50% of the difference between the interest income actually received on specified loans relating to financing qualified child care and development facilities and the amount of interest income that would have been received had the loan been made at one point above the prime rate.

These provisions will be discussed separately.

SUMMARY OF AMENDMENT

The April 12, 1999, amendments expanded eligibility to include taxpayers who contribute costs for low-income facilities, added a certification requirement when the 70% credit is claimed, and increased the maximum annual carryover limitation to \$150,000. The April 12, 1999, amendments also limit the current credit for employer-provided child care programs and facilities to licensed programs and facilities.

Board Position:

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Department/Legislative Director

Date

Johnnie Lou Rosas

5/11/1999

The April 12th amendments resolved the implementation considerations regarding the child care facility credit addressed in the department's analysis of the bill as introduced February 19, 1999; however, new policy, implementation and technical issues have been identified as a result of this amendment. The implementation considerations and amendments regarding the credit for interest income on child care facilities still apply and have been included.

The remainder of the department's analysis of the bill as introduced February 19, 1999, still applies.

1. EMPLOYER CHILD CARE PROGRAM CREDIT

SPECIFIC FINDINGS

This bill would allow a credit of 30% of the cost paid, contributed, or incurred by a taxpayer, other than the provider or owner, on or after January 1, 2000, for startup expenses of establishing a licensed child care program or constructing a licensed child care facility in California, if at least **40%** of the children served by the facility are from households that have income below 75% of the local area median income, as published by the United States Department of Housing and Urban Development (HUD) or as defined in regulations implemented by the State Department of Education after January 1, 2000.

The bill would allow a credit rate of 70% to be substituted for a credit rate of 30% if at least **51%** of the children served by the facility are from households that have income below 75% of the local area median income. This provision also would require the licensed program or facility receiving the benefit of any cost paid, incurred, or contributed and claimed by a taxpayer to maintain records, certify, and maintain that certification that the facility did register and serve children primarily from households with incomes below 75% of the local median income, on average, for the tax year in which the credit is claimed.

This bill would allow the credit to be claimed by taxpayers other than employers or building owners leasing space to employers. Specifically, taxpayers who are not the owner or provider of the child care facility but who contribute funds to cover costs of a facility which serves low-income children may claim the credit.

This bill would increase the allowable credit carryover to \$150,000; however, existing **state law** would still limit actual usage of the credit to a maximum of \$50,000 in each taxable or income year.

Implementation Considerations

The following implementation concerns have been identified and department staff is working with the author's office to resolve these issues.

The section this bill is amending is currently a credit for employers or building owners, and the added provisions are for non-employers or non-building owners; however, all employer and owner restrictions still apply. If the author wants to expand the credit, it would probably be better to draft a new low-income child care section and allow taxpayers to take either credit.

The provision allowing a 70% credit to be substituted for 30% is worded somewhat ambiguously and needs clarification that the **facility will provide** certification to the taxpayer that the facility did register and serve children primarily from households with incomes below 75% of the local median income in the minimum requisite percentages that satisfy the "on average" requirement in the statute and that the **taxpayer will retain** that certification. Also, this provision requires at least 51% of the children to be from low-income households and then uses the term "primarily." Amendments 3 and 7 would clarify the certification requirement and eliminate the inconsistent wording. Amendments 4 and 9 would strike redundant language requiring the taxpayer to submit certification for the credit to the Franchise Tax Board, since existing law contains this requirement.

Existing law limits the credit to \$50,000, while the bill allows \$150,000 of any excess to be carried over. However, since the credit already has been limited to \$50,000, \$150,000 of excess could not exist to be carried over. It would appear that the author intends \$200,000 of credit to be allowed, but only \$50,000 to be used in any given year. This language needs clarification.

This bill would require the program or facility to be licensed. However, this requirement is unclear since the individual child care operators, rather than the program or facility, receive licensing.

Technical Considerations

The tentative minimum tax provisions should specify that the credit is relating to child care "programs or facilities." Amendments 1 and 5 have been provided for clarification.

Amendments 2 and 6 have been provided to make a clarifying grammar change.

Amendment 8 has been provided to correct a spelling error.

FISCAL IMPACT

Tax Revenue Estimate

Revenue losses from this provision are estimated as follows:

Effective For Income/Taxable Years Beginning on or After January 1, 1999 Enactment Assumed After June 30, 1999 (In Millions)				
	1999-0	2000-1	2002-3	2003-4
Increase Credit to 70%	(\$1)	(\$1)	(\$1)	(\$1)

This analysis does not consider the possible changes in employment, personal income, or gross state product that could result from this measure.

Tax Revenue Discussion

Additional revenue losses from the April 12, 1999, amendments for increasing the excess carryover credit and the changes in the requirements for the tax

credit to lenders, are projected to be an incremental loss of an additional \$500,000.

2. CREDIT FOR INTEREST INCOME ON CHILD CARE AND DEVELOPMENT FACILITIES

Implementation Considerations

The credit is for foregone interest on portions of loans used to "purchase, construct, expand, or rehabilitate" a qualified child care or development facility, beginning in the year the child care facility construction is completed and there is initial enrollment. Since the credit is provided for loans to "purchase, expand, or rehabilitate" as well as construct, it is unclear which year is the first year for the credit based on purchase, expansion, or rehabilitation. In addition, the language could be interpreted to operate so as to limit the credit to loans for the construction of a qualified child care facility. Amendments 11 and 12 have been provided to clarify these matters.

Generally, the term "real property" in tax law means the land and the structure permanently affixed to the land. Therefore, to avoid confusion the term "real property" should be changed to "land." Amendment 13 has been provided to make this clarification.

The credit is to be claimed in equal installments over a period equal to "the lesser of 10 years or the term of the loan." If the taxpayer accelerates payments and the loan is paid off prior to the period that the credit is allowed, it is unclear if the bank or financial corporation could accelerate claiming the balance of the credit in the year of payoff, would continue to claim the credit over the specified period, or would lose the unclaimed portion of the credit.

The recapture of the credit claimed is a reporting requirement of the taxpayer, not the affirmative duty of the state. Amendment 14 has been provided to clarify this requirement.

Technical Consideration

This provision refers to banks and financial corporations as qualifying for this credit, but then the section later goes on to refer to "taxpayer." Amendment 10 has been provided for consistency and clarification.

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FRANCHISE TAX BOARD'S
PROPOSED AMENDMENTS TO SB 549
As Amended April 12, 1999

AMENDMENT 1

On page 3, line 26, after "child care" insert:

programs or facilities

AMENDMENT 2

On page 6, strikeout lines 26 and 27 and insert:

taxpayer, other than the provider or owner, on or after January 1, 2000, for
startup expenses of establishing a

AMENDMENT 3

On page 7, strikeout lines 35 to 37 and insert:

taxpayer pursuant to this section shall provide certification to that taxpayer
that the facility did register and serve children at least 51 percent of which
were from

AMENDMENT 4

On page 8, strikeout lines 3 through 6, inclusive.

AMENDMENT 5

On page 12, line 2, after "child care" insert:

programs or facilities

AMENDMENT 6

On page 14, strikeout lines 21 and 22 and insert:

taxpayer, other than the provider or owner, on or after January 1, 2000, for startup expenses of establishing a

AMENDMENT 7

On page 15, strikeout lines 29 to 31 and insert:

taxpayer pursuant to this section shall provide certification to that taxpayer that the facility did register and serve children at least 51 percent of which were from

AMENDMENT 8

On page 15, line 33, strikeout "pf" and insert:

of

AMENDMENT 9

On page 15, strikeout lines 36 through 39, inclusive.

AMENDMENT 10

On page 18, line 25, strikeout "taxpayer's" and insert:

bank or financial corporation's

AMENDMENT 11

On page 18, line 26, strikeout "care facility construction" and insert:

care or development facility is purchased or construction, expansion, or rehabilitation of the qualified child care or development facility

AMENDMENT 12

On page 19, line 1, strikeout "qualified facility" and insert:

"qualified child care or development facility"

AMENDMENT 13

On page 19, line 20, strikeout "real property" and insert:

land

AMENDMENT 14

On page 19, strikeout lines 21 through 29, and insert:

(d)(1) Upon the occurrence of a disallowing event, no installment of the credit shall be allowed under this section for the income year of a disallowing event and any subsequent income year of the period provided in paragraph (2) of subdivision (b).

(2) For purposes of this subdivision, a "disallowing event" means either:

(A) The child care provider is in default under the loan agreement for more than 90 days.

(B) The child care provider ceases providing child care services in the facility for which the loan was made for more than 90 days.

(C) In the case of a credit based on loan covenants described in clause (ii) of subparagraph (B) of paragraph (1) of subdivision (c), the child care provider ceases providing child care services in compliance with that loan covenant for more than 90 days.